IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4863 of 2007()

CRIME NO.81/2005 OF THENJIPALAM POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED

KUNHIMOIDEEN.V, S/O MUHAMMED ALI,
AGED 26 YEARS, PAVILAKKANDI HOUSE,
PALLIKKAL P.O., MALAPPURAM DIST.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4863 of 2007

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Dated this the 13th day of August, 2007

ORDER

Petitioner claims to be an accused in Crime No.81/2005 of Thenjipalam Police Station, registered,inter alia, under Sec.326 IPC. Investigation is complete. Final report has already been filed. Consequent to nonavailability of the petitioner, warrant of arrest and steps under Sec.82 Cr.P.C were initiated against the petitioner. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and co-operate with the learned Magistrate for expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course. The learned Public Prosecutor points out that there

is difference between the name of the 3rd accused as per the records of the Police and the name of the petitioner described in this petition. Be that as it may, I am satisfied that no directions under Sec.438 Cr.P.C can or ought to be issued.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE